IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL (ST) NO.7555 OF 2005
Along with
Civil Application No.2550 of 2005

1.Tukaram Sitaram Bile, .. Appellant.
Vs
1. Anandibai Shridhar Mhadeshwar
and or. .. Respondents.

Ms.P.P.Tendulkar i/b Mr Pradeep Sawant, for the appellant.

CORAM : **D.B.BHOSALE,J.**
DATE : 26/02/2007

PC:

1. Heard the learned counsel for the appellant. At the request of the learned counsel for the appellant, the civil application for condonation of delay and the second appeal on merits were heard together.

2. This second appeal arises from the concurrent judgments of the courts below, by which a suit for partition filed by respondent no.1-plaintiff has been decreed and she has been granted one-half share in the suit properties. There is no dispute that plaintiff no.1 and the mother of defendant nos 1 to 3 are the joint tenants in the suit property. The plaintiff's father-in-law and the defendants' father were the brothers. Defendant nos 1 to 3 inherited the property after the death of their mother. The suit house was constructed jointly. In view thereof, respondent no.1-plaintiff claims one-half share in the suit

property. I perused the judgments of the courts below. The courts below have rightly held that defendant nos.4 and 5, the sons of defendant no.3, have no right in the suit property as long as defendant no.3 is alive. In view thereof, I do not find any reason to interfere with the concurrent findings recorded by the courts below. That apart, the decree of the trial court was challenged only by defendant no.4 by way of the First Appeal bearing Regular Civil Appeal No.37 of 1999 and his claim was rightly rejected for the reasons recorded in paragraphs 13 and 14 of the judgment. It is pertinent to note that the present appellant-defendant No.5 did not challenge the order of the trial court before the first Appellate Court. Keeping that in view and considering the concurrent findings of the courts below and as I find sufficient material on record to sustain these findings and considering extremely limited jurisdiction of this court to disturb the findings of facts, this appeal on merits deserves to be rejected. Insofar as the application for condonation of 108 days delay is concerned, in my opinion, the appellant/applicant has not shown sufficient cause for condonation of delay and hence it is rejected. In the circumstances, the appeal and the application for condonation of delay, both stand rejected.

(D.B.BHOSALE,J.)